

REMARKS

Claims 1, 12, 15, 26, 36, 46, and 61 are amended. New claim 62 is added. Claims 1-5, 7-12, 14-19, 21-39, 41-49, 51-62 are now pending in the application. The amendments to the claims as indicated herein do not add any new matter to this application. Each issue raised in the Office Action mailed June 12, 2008 is addressed hereinafter, in order of appearance.

Claims 1-5, 7, 10-12, 14, 26-30, 34-40, 44-50 and 54-60 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Chang et al. (U.S. Patent Pub. 2002/0169861) in view of Moriarty (U.S. Patent 7,124,173) and further in view of Klassen et al (U.S. Patent 6,711,137). Claims 15-21 and 23-25 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Chang et al. (U.S. Patent Pub. 2002/0169861) in view of Moriarty (U.S. Patent 7,124,173) in view of Klassen et al (U.S. Patent 6,711,137) and further in view of Donzis et al (U.S. Patent 6,976,071).

For convenient reference, Claim 1 is repeated below.

A method for monitoring the availability of resources in a network, comprising  
the computer-implemented steps of:  
receiving an activity announcement packet from **one node of a plurality of nodes in the network**;  
determining that the node is potentially inactive if no successive activity announcement packet is received from the node within a specified first time period;  
determining that the node is inactive if no successive activity announcement packet is received from the node within a specified second time period;  
and  
detecting that the node or a connection to the node is active if an activity announcement packet is received from the node within the specified first time period;  
wherein the activity announcement packet is sent **only by specific nodes of the plurality of nodes in the network**, and does not require a response.

From above it is apparent that Claim 1 recites the activity announcement packet being sent only by specific nodes of the plurality of nodes in the network, is sent only in a single

direction, and does not require a response. These features are discussed at least within paragraphs [0033] and [0066-0067] of Applicant's specification.

Beginning with the claimed "receiving an activity announcement packet from one node of a plurality of nodes in the network", within Chang, all nodes participate in the heartbeat. This consumes network bandwidth. Meanwhile, by having only specific nodes send activity announcement packets, the claimed method achieves reduced network traffic (paragraph [0066]) and requires minimal intervention (paragraph [0067]).

In Chang, all nodes pass on (send) the heartbeat. Thus, the claimed feature of the "activity announcement packet is sent only by specific nodes" is not met by Chang. Similarly, Moriarty's performance measurement packet 20 is sent only from the sender 1 to the recipient 2, and might be intercepted by the border unit 3. Thus, Moriarty does not disclose the claimed "plurality of nodes in a network", and certainly does not disclose the performance measurement packet 20 being "sent only by selected" anything.

Next, Chang's heartbeat requires a response, which contradicts the language of Claim 1 "does not require a response". From Chang's FIGS. 5A-5B, it is apparent that all nodes are intended to pass on the heartbeat so that the heartbeat eventually returns to the group leader 200. Such a return is a "response". If the node 300 does not receive a heartbeat ("response"), the node 300 sends a death message to the group leader. Chang's death message also is a response.

Similarly, Moriarty's ping packets and ICMP packets also require a response which contradicts the claimed "does not require a response". In fact, Moriarty's ping packet is also described as an echo packet (Moriarty, col. 2, line 15) in which the word "echo" inherently connotes a response. Moriarty's ping packets flow in two direction (which contradicts the claimed "single direction"). Also, Moriarty's Step 18 (FIG. 3) and SS6 (FIG. 4) explicitly describe sending a response.

The Office Action asserted that this feature was met because of Klassen's unidirectional pings, one-way pings, non-echoed pings (Office Action, Page 4, middle paragraph). However, this does not change the fact that both Chang and Moriarty require and could not function without the use of some type of response. Within Chang, if no response is received, the node 300 automatically sends a death message to the group leader which would result in rendering the Chang invention essentially inoperable. Thus, there is no way to implement Chang without incorporating some type of response mechanism. To do so would violate a principle of operation of Chang.

Within Moriarty, if a response is not received, the "round-trip" time cannot be calculated, which is a key feature of the invention (Moriarty; col. 9, lines 14-17).

Accordingly, the proposed combination of Klassen with Chang and Moriarty would violate principles of operation of the references, as Chang and Moriarty would have no use for such one-way communication. A skilled artisan would have had no reason to combine these references, as they contradict each other and would not work together.

Claims 12, 15, 26, 36, 46, and 61 recite subject matter similar to Claim 1.

For at least the above reasons, the rejections of claims 1, 12, 15, 26, 36, 46, and 61 are unsupportable and should be withdrawn. Similarly, the rejections of all claims dependent therefrom are also unsupportable and should be withdrawn.

Claim 62 recites "monitoring only selected nodes within the network". This feature is advantageous because it is therefore not necessary to track polling information of every node within the network, thereby reducing network management overhead (Applicant's specification, paragraph [0066]).

For the reasons set forth above, all of the pending claims are now in condition for allowance. The Examiner is respectfully requested to contact the undersigned by e-mail or

telephone relating to any issue that would advance examination of the present application. As per MPEP Chapter 5, Applicant acknowledges that Internet communications may not be secure.

A petition for extension of time, to the extent necessary to make this reply timely filed, is hereby made. If applicable, a check for the petition for extension of time fee and other applicable fees is enclosed herewith. If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,  
HICKMAN PALERMO TRUONG & BECKER LLP

/christophermtanner#41518/

Dated: July 31, 2008

---

Christopher M. Tanner  
Reg. No. 41,518

ctanner@hptb-law.com  
2055 Gateway Place Suite 550  
San Jose, California 95110-1093  
Telephone No.: (408) 414-1238  
Facsimile No.: (408) 414-1076